

RECORDATION NO. 25176 FILED

AUG 31 '04 12-33 PM

SURFACE TRANSPORTATION BOARD

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SUITE 301  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
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20036

OF COUNSEL  
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August 30, 2004

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of August 31, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC  
599 Lexington Avenue  
New York, New York 10022

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, as  
Agent  
FPA 4 Lease/Asset Finance  
Am Tucherpark 1 (FPA)  
80538 Munich  
Germany]

Mr. Vernon A. Williams  
August 31, 2004  
Page Two

A description of the railroad equipment covered by the enclosed document  
is:

25 railcars SOO 600100 – SOO 600124  
199 railcars AOK 29150 – AOK 29349 (except 29295)

A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$30.00 payable to the order of  
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the  
undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

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EXECUTION COPY

SURFACE TRANSPORTATION BOARD

MEMORANDUM OF MORTGAGE

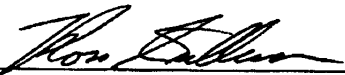
Memorandum of Mortgage, made and entered into as of August 31, 2004 between BABCOCK & BROWN RAIL FUNDING LLC (the "Debtor") and BAYERISCHE HYPO-UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 13 dated the date hereof, the "Security Agreement") between the Secured Party and the Debtor.

WITNESSETH:

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By 

Name: Ross Sullivan

Title: Vice President

STATE OF CALIFORNIA       )  
  ) ss.:  
COUNTY OF SAN FRANCISCO )

On the 30<sup>th</sup> day of August in the year 2004 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he resides at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President (duly appointed) of Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.

Heidi Wagner  
Notary Public

[Notarial Seal]



Memorandum of Mortgage

NEWYORK/#138433.1

**Exhibit A  
to Memorandum of Mortgage**

**EQUIPMENT**

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	25	2004	73' riserless deck Centerbeam Flatcars, 286,000 GRL, AAR car type code F483, manufactured by America Railcar Industries, Inc.	SOO 600100-600124, inclusive.	None.
2	199	2004	73' riserless deck Centerbeam Flatcars, 286,000 GRL, AAR car type code F483, manufactured by America Railcar Industries, Inc.	AOK 29150-29294 and AOK 29296- 29349, inclusive.	None.

**Exhibit B**  
**to Memorandum of Mortgage**

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Lease #

1. Lease Agreement made as of September 1, 2003, by and between Greenbrier Leasing Corporation and Soo Line Railroad Company.

Schedule No. 3 to Lease Agreement made as of March 1, 2004, by and between Greenbrier Leasing Corporation and Soo Line Railroad Company.

Memorandum of Lease Agreement and Schedule No. 3 made and entered into as of March 1, 2004, by and between Greenbrier Leasing Corporation and Soo Line Railroad Company.

Bill of Sale dated May 20, 2004, from American Railcar Industries, Inc. to Greenbrier Leasing Corporation.

Bill of Sale dated August 31, 2004 from Greenbrier Leasing Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Purchase Agreement [GLC] dated as of August 31, 2004, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Assignment and Assumption Agreement, dated as of August 31, 2004, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice and Acknowledgment dated August 20, 2004, made by Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC to Soo Line Railroad Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated August 31, 2004, made by Babcock & Brown Rail Funding LLC and Greenbrier Leasing Corporation to Soo Line Railroad Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Warranty Assignment [Soo Line] dated as of August 31, 2004, between Greenbrier Leasing Corporation, as assignor thereunder, and Babcock & Brown

Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Manufacturer's Consent dated August 18, 2004, made by American Railcar Industries, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Side Letter dated August 31, 2004 from Babcock & Brown Rail Funding LLC addressed to Greenbrier Leasing Corporation, in respect of the original equipment cost for the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Letter Agreement dated August 31, 2004 from Greenbrier Leasing Corporation addressed to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

2. Lease Agreement made as of April 1, 2004, by and between Greenbrier Leasing Corporation and RailTex, Inc.

Schedule No. 1 to Lease Agreement made as of April 1, 2004, by and between Greenbrier Leasing Corporation and RailTex, Inc.

Memorandum of Lease Agreement and Schedule No. 1 made and entered into as of April 1, 2004, by and between Greenbrier Leasing Corporation and RailTex, Inc.

Bill of Sale dated August 10, 2004, from American Railcar Industries, Inc. to Greenbrier Leasing Corporation.

Bill of Sale dated August 31, 2004 from Greenbrier Leasing Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Purchase Agreement [GLC] dated as of August 31, 2004, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Assignment and Assumption Agreement, dated as of August 31, 2004, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Notice and Acknowledgment dated August 26, 2004, made by Babcock & Brown Rail Funding LLC and Greenbrier Leasing Corporation to RailTex, Inc., in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated August 31, 2004, made by Babcock & Brown Rail Funding LLC and Greenbrier Leasing Corporation to RailTex, Inc., in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Warranty Assignment [RailTex] dated as of August 31, 2004, between Greenbrier Leasing Corporation, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Manufacturer's Consent dated August 18, 2004, made by American Railcar Industries, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Side Letter dated August 31, 2004 from Babcock & Brown Rail Funding LLC addressed to Greenbrier Leasing Corporation, in respect of the original equipment cost for the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Letter Agreement dated August 31, 2004 from Greenbrier Leasing Corporation addressed to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Railcar Service Agreement [RailTex] dated as of August 31, 2004, between Greenbrier Management Services, LLC and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 2" in Exhibit A hereto.

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.



CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

8/31/04



\_\_\_\_\_  
Robert W. Alvord